

IN THE WEST VIRGINIA
SUPREME COURT OF APPEALS

ALICIA A. EISENBEISS
and JEFFREY C. EISENBEISS

Appellants

On Appeal from the
Public Service Commission
Of West Virginia

Case No. 05-1590-E-CS

v.

DOCKET NO. 33376

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
And BEECH RIDGE ENERGY, LLC; WEST VIRGINIA
STATE BUILDING AND CONSTRUCTION TRADES
COUNCIL, AFL-CIO

Appellees

Appellant's Brief

Alicia A. Eisenbeiss Pro Se
Jeffrey C. Eisenbeiss Pro Se
PO Box 21
Renick, WV 24966
304-497-3180

Codes

W. Va Code 24-2-1(c).....	2
W. Va Code 24-2-11c.....	2
W. Va Code 24-2-11(c)c.....	6
Endangered Species Act (16 USC 1531 et seq.).....	16
Migratory Bird Treaty Act (16 USC 701 et seq.).....	16
National Environmental Policy Act of 1969 (42 USC 4321 et seq.).....	16

Rules

Rules 3.1.m.4 A through C4 Noise.....	12
Rule 3.1.m.4.B.1 Noise.....	12
Rule 3.1.h. Maps.....	12
Rules 3.1.m.3 View.....	13
Rule 3.1.o Cultural Impacts.....	13
Rules 3.1.m. Environmental Data.....	16

**IN THE WEST VIRGINIA
SUPREME COURT OF APPEALS**

**ALICIA A. EISENBEISS
and JEFFREY C. EISENBEISS**

Appellants

**On Appeal from the
Public Service Commission
Of West Virginia
Case No. 05-1590-E-CS**

v.

DOCKET NO. 33376

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
And BEECH RIDGE ENERGY, LLC; WEST VIRGINIA
STATE BUILDING AND CONSTRUCTION TRADES
COUNCIL, AFL-CIO**

Appellees

**TO THE WEST VIRGINIA SUPREME COURT OF APPEALS AND THE
HONORABLE JUSTICES THEREOF:**

Appellant's Brief

Come now, Appellants, Alicia A. and Jeffrey C. Eisenbeiss, pro se, filing this brief to comply with the order, of the West Virginia Supreme Court of Appeals, in the City of Charleston, entered April 18, 2007, that granted these Appellant's petition to appeal from, suspension and review of the final order of the Public Service Commission of West Virginia, dated January 11, 2007. The final order of the Public Service Commission of West Virginia, January 11, 2007, granted Beech Ridge Energy, LLC, a siting certificate for

a 186 megawatt wind-powered generating facility, expected to consist of 124 1.5 MW wind turbines, mounted on 262-foot tubular steel towers, along twenty three miles of ridgetops and for a 138 kV transmission line to connect the generating facility to the Allegheny Power's Grassy Falls substation, located in Nicholas County.

Introduction

Appellee, the Public Service Commission of West Virginia, has the affirmative and mandatory duty to protect the public by enforcing compliance of the Siting Rules bound and defined by the siting requirements of an application for a wind powered generating facility, *W. Va Code 24-2-1(c)*, and *W. Va Code 24-2-11c*. The case now before the Honorable Court as set forth the basis where the applicant has failed to meet the criteria of a siting certificate and the Apple's authority and discretion in granting a siting certificate has failed to enforce the laws at hand.

The Commission is compelled by its "statutory obligation" to decide matters specifically outlined. The ultimate facts of the case are relevant to the procedure in which the Commission invoked and the conclusions the Commission established. The record demonstrated a procedure based on "Commission- established conditions," rather than being bound by its Rules and statute. This case is a clear illustration of the discretion in authority of the Public Service Commission of West Virginia guaranteed there was no enforceable mechanism established to protect the public interest, the public, private landowner's bundle of rights and the general interest of the state and local economy.

Statement of Facts

December 8, 2005

* Appellants submit letter-stating grounds for requesting Intervenor status

December 16, 2005

*Applicant, Beech Ridge Energy, LLC, Objects to Appellants Intervenor status

December 22, 2005

*Staff of PSC of West Virginia supports granting Appellants Intervenor status

December 23, 2005

*Applicant, Beech Ridge Energy, LLC, Objects to PSC Staff's Recommendation

February 6, 2005

*Public Service Commission of West Virginia grant Appellants Intervenor status

March 23, 2005

*Applicant, Beech Ridge Energy, LLC First Set of Interrogatories, Data Request or Request for Production of Documents to Appellants

March 30, 2005

*Direct Testimony of Appellant, Jeffrey Eisenbeiss filed by counsel for MCRE

April 6, 2005

*Direct Testimony of filed Appellants

*Request to Commission to Conduct Unbiased Scientific Analysis in Relation to Noise and the Related Health Risk Issues created by Noise.

*Request to Commission to Conduct Unbiased Economic Impact Studies on Property Values as a Result of View Shed Degradation, Noise Pollution, Light Pollution and Health Risks

*Motion by Appellants that Applicant be Required to Post Bond

*Motion by Appellants Adopt Position Embraced by MCRE and be Granted Identical Relief

*Response filed by Appellants to Applicant, Beech Ridge Energy, LLC First Set of Interrogatories, Data Request or Request for Production of Documents

*Literature Documents Submitted

May 1, 2006

*Applicant, Beech Ridge Energy, LLC, Motion to Compel Responses to First Set of Interrogatories, Data Request or Request for Production of Documents of Appellants

May 5, 2006

*Public Service Commission of West Virginia Order

*Motion Denied to Hire Experts to Conduct Technical Analysis

*Motion Denied to Require Consideration of the Financial Impact on Property Values as a Result of View shed Degradation, Noise Pollution, Light Pollution and Health Risks

*Grants Motion of Applicant, Beech Ridge Energy, LLC, to Compel Responses from Appellants

May 10, 2006

*Direct and Rebuttal Testimony of Appellants filed

*Submitted 84 Supporting Literature Documents of Unbiased Studies & 2 CD's

*Compelled Response of Appellants filed First Set of Interrogatories, Data Request or Request for Production of Documents

May 10, 11, 12, 16, 17, 18 2006

* Evidentiary Hearing, Charleston, Appellants Actively Participated

May 12, 2005

*Applicant, Beech Ridge Energy, LLC, Motion to Strike Late Filed Rebuttal Testimony of Appellants

June 26, 2006

* Appellants Initial Brief filed

July 6, 2006

*Letter and Comments Filed by Dr. Nina Pierpont on behalf of Appellants

July 10, 2006

*Appellants Reply Brief filed

July 20, 2006

*Response to Appellants Reply Brief filed by Applicant, Beech Ridge Energy, LLC

August 1, 2006

*Appellants file Motion to Strike Post Brief Filing by Applicant, Beech Ridge Energy, LLC

August 28, 2006

*Public Service Commission of West Virginia Order

*Appellants Motion Denied to Conduct a View

*Appellants Motion Denied to Require Applicant, Beech Ridge Energy, LLC, to post a bond for damages

*Appellants Motion Denied to Strike Post Brief Filing by Applicant, Beech Ridge Energy, LLC

* Public Service Commission of West Virginia accepts Dr. Nina Pierpont's letter and comments as public comment

*Grants Applicant, Beech Ridge Energy, LLC, a siting certificate, conditioned

August 30, 2006

*Appellants file Motion to Extend Time Period to File the Petition for Reconsideration

September 5, 2006

*Public Service Commission of West Virginia Grants Appellants Motion to Extend Time Period to File the Petition for Reconsideration

September 18, 2006

* Appellants file Petition for Reconsideration

September 27, 2006

*Reply to Petition for Reconsideration Filed by WV State Building and Construction Trade Council

September 28, 2006

*Reply to Petition for Reconsideration Filed by Applicant, Beech Ridge Energy, LLC

January 11, 2007

* Public Service Commission of West Virginia Final Order

* Denies Appellants Petition for Reconsideration

February 12, 2007

*Appellants file petition to appeal the final order of the Public Service Commission of West Virginia to the West Virginia Supreme Court of Appeals

March 14, 2007

*Appellee, Beech Ridge Energy, LLC, file Response to Appellants Petition to Appeal

March 15, 2007

*Appellee, WV State Building and Construction Trade Council, file Response to Appellants Petition to Appeal

March 16, 2007

*Appellee, Public Service Commission of West Virginia, file Response to Appellants Petition to Appeal

April 18, 2007

*Appellant Presented Oral Petition to Appeal to the West Virginia Supreme Court of Appeals

* West Virginia Supreme Court of Appeals grants Appellants petition to appeal

Assignments of Error

The Public Service Commission of West Virginia erred in their discretion in the use of authority to appraise and balance the interests of the public and the interest of the state and local economy, by failing to conduct any thorough, independent evaluation of all respective positions presented in this case. Denying and intentionally disregarding the interest of the public, the general interest of the state and the local economy, predisposes a conclusion in the interest of the Applicant.

The Public Service Commission of West Virginia erred by not dismissing an application that failed to comply with Siting Rules on numerous facets. Though the Commission may interpret the Rules, the Applicant's application was erroneously flawed with deliberate inaccuracies and apparent misrepresentation.

Argument

The Commission Order dated August 28, 2006 specifically stated the *W.Va Code* 24-2-11(c) as the statute and balancing test "In deciding whether to issue, refuse to issue, or issue in part or refuse to issue in part a siting certificate, the Commission shall appraise and balance the interest of the public, the general interest of the state and local economy, and the interests of the applicant. The commission may issue a siting certificate only if it determines that the terms and conditions of any public funding or any agreement relating to the abatement of property taxes do not offend the public interest, and the construction of the facility or material modification of the facility will result in a substantial positive impact on the local economy and local employment. The commission shall issue an order that includes appropriate findings of fact and

conclusions of law that address each factor specified in this subsection.” Order August 28, Pg. 75

Requests to the commission were made March 30, 2006, by these Appellants for unbiased scientific analysis and economic impact studies. For the specific reason that we do not have the financial capability to provide such studies as a company like the Applicant. This request was denied by The Commission order dated May 5, 2006. The order of May 5, 2005, stated that that staff will not hire technical experts as several intervenors requested, The Commission “wishes to make clear that the Commission expects Staff to conduct a thorough, independent evaluation of all respective positions presented in this case.” The scope of the work to make such conclusions is not the expertise of Staff with regards to noise issues and the related health risks associated with a large-scale wind generation facility. Staff simply quoted conclusions from submitted exhibit WP2, a briefing sheet authored by The British Wind Energy Association. Furthermore, Staff stated, “Staff could not produce reliable line of sight information which might confirm the accuracy of the applicants view shed study.” “A number of photo simulations were provided whose accuracy it is not possible for Staff to verify.”

Based on the overwhelming amount of documentation available concerning raised issues, Staff failed in their capacity to provide The Commission with reliable independent conclusions of the noise created by such project and the related health risks concerning the close proximity of the public to a large-scale wind generating facility. It is overwhelmingly clear that Staff, did not provide The Commission with any thorough, independent data and studies in relation to raised issues.

The intention of these to Appellants demand such requests for unbiased and independent critiques stem from our legitimate concerns and issues that do have logical

relevance due to the close proximity of such a large scale industrial project to our farm, residence and business. This intent to make such requests were not for the State to pay for these Appellants to prove our case, as the Commission would like you to believe, but to demand that that Public Service Commission of West Virginia protect the public through independent analysis and studies, and thoroughly analysis the concerns and issues due to the substantial potential adverse effects of 124 industrial size wind turbines, **along twenty three miles** of ridge tops.

It is unreasonable of The Commission to expect 'pro se' petitioners to provide expert witnesses for every aspect of the issues raised in relation to the development of a large-scale wind generating facility. If the commission on the behalf of these Appellants and the public had provided experts, it would have allowed cross-examination that could have concurred or refuted Beech Ridge's studies and experts. In cases as this, the testimony is overwhelmed with experts hired by the Applicant. Undoubtedly, the preponderance of evidence will weigh in the favor of the Applicant

The eighty documents submitted, by these appellants were not allowed to be submitted as evidence at the evidentiary hearing because others authored the documents. These documents justify Petitioners allegations and pleadings. The clinical and scientific documents submitted May 12, 2006, by these appellants, and the letter submitted by Dr. Nina Pierpont, July 7, 2006, on behalf of these appellants, give logic and justification to defend our concerns. These Appellants raised these concerns and issues in our intervention letter dated, December 8, 2005 and requests made for unbiased studies, dated April 6, 2006.

The eighty documents pertaining specifically to unbiased studies of wind generating facilities and Dr. Pierpont's letter addressing the health effects from noise

created by wind generating facilities were not accepted as evidence but rather demoted to public comment based on the discretion of The Commission. The 'financial inability' of pro se appellants to employ witnesses to testify should not have just cause for supporting documentation submitted to be automatically discounted to public comment. Again, the status of public comment weighed very little in balancing the statute.

The Commission acknowledged Dr. Pierpont's letter addressed "among other things, a set back recommendation specific for the Appalachian region," Order August 28, Pg. 74 The Commission failed to address any of the "among other things" of Dr. Pierpont's letter, submitted July 7, 2006, which specifically addressed the concerns and issues raised by these appellants in regards to noise and the health effects created by such noise. Dr. Pierpont's letter clearly states unbiased clinical and scientific research to base her opinions on the health effects created by the noise of the **modern** industrial wind turbine. Dr Pierpont states specific set back recommendations that are appropriate to the mountainous topography of Appalachia, in order to protect the public interest and welfare.

The Commission order states to have considered and reconsidered issues and evidence, which provided points to be further evaluated and resolved. But, the record is an indicator of a Commission who chose to use their authority in a manner that clearly indicates discretion with prejudice. For reasons set forth by these appellants, the Commission was unreasonable in its Order.

The Commission had "a statutory obligation" "to appraise and balance", to protect the public interest and the state and local economy. The Commission concluded that "the facility's negative impacts will be minimally disruptive", without unbiased

independent studies. This is a critical component that has been grossly overlooked and underestimated in the Siting Rules of a large-scale industrial wind generating facility. Studies provided by an applicant to the Commission should have been subjected to peer review for the balancing test to weigh equally. To depart from this concept leaves the door open for the basis of an application to be based on speculation and conjecture.

Without any independent analysis, the current procedure The Commission invoked, predisposed the ambition of the applicant, the wind developer, over the interest of the public, private landowner bundle of rights and public rights. The fundamental procedure "to appraise and balance" is fatally flawed and will continue to be flawed based on the current Siting Rules. The power of the applicant's purse dominates the evidence of the proceedings and the fundamental rights of appellants like ours are ignored. The issues and concerns brought forth by intervenors and public comment illustrated the overwhelmingly incomplete and inadequate application filed by the Applicant. The burden of proof to provide accurate and credible data pertaining to the Siting Rules has in reality fallen on the public.

Evidence presented by the Applicant on the base line noise levels are based on faulty criteria and are intentionally misleading which conclusively disregarded protecting the interest of public health. Testimony of this appellant clearly refuted the Applicant's noise study when describing the location of recording ambient noise, "the location of this site is located right along Spring Creek. If you had a tennis ball, you could bounce it off the middle of the road and it would fall into the creek about thirty feet below. Furthermore, there's a mountain stream that comes off the hillside and goes through a culvert that was not visible in the picture provided by the company to do the acoustics. And I did go to the site. I took five GPS readings to confirm I was at the exact

site. And it appeared to me that it was a very noisy site from my observations.”

Testimony May 16, Pg 223 Line 12. The Applicant failed to provide accurate predictive noise studies and The Commission’s acceptance that “Beech Ridge adequately responded that the location was selected by an acoustics expert, based upon his professional experience” Order August 28, Pg 80, relies solely on an expert hired by Beech Ridge and disregards testimony of this appellant. The process failed to bring forth any independent analysis and with the end result weighing completely on the expert provided by the Applicant.

In addition, the Commission terminated a Noise Rule Task Force, on June 8, 2006, which it established a year ago to determine the Siting Rules for noise and for employing outside experts to help develop and determine these Siting Rules. Having a Noise Task Force in place and not to have adequately addressed the legitimate concerns raised by of these appellants, clearly demonstrated the lack of balance to provide the public with credible and unbiased studies. By dissolving the Noise Task Force, regardless of it being in a separate proceeding, strengthens the point of “appraising or balancing.” Again, not providing any independent expertise in relations to noise, essentially disregarded, overlooked and failed to balance the public interest in siting this industrial wind generating facility.

Additionally, the noise study submitted by Acentech, on behalf of the Applicant, in November 2005, failed to document any of the structures on our property on all their maps. Acentech, then, presented, May 2006, another map on the premise of a misrepresented monitoring device. The new map concluded one structure representing our property and indicated our property being located within the one-mile radius of many turbines. The second filed map still failed to accurately portray our property,

residence, business and farm in relation to the turbine sites. Regardless of the resubmitted noise study in the Applicant's attempt to correct complete inaccuracies, data considered as evidence was not accurate and based purely on speculation in reference to the proximity of our farm, residence and business to proposed turbine sites. The noise study also failed to represent any nighttime sound measurements, which is completely inconclusive with Siting Rules. The record indicates the noise study is inadequate for Siting Rules under *Rules 3.1.m.4 A through C4 Noise* and has been accepted by the Commission.

The noise study also disclosed sound measurement for residences within a mile of turbines would be different than projected in the study and most residents would be participating in the project. It is interesting to note that staff addressed in their initial brief: "Noise seems to be of particular concern to Jeffrey and Alicia Eisenbeiss" and further noted "there is no doubt this project will generate noise. There is also no doubt this project will generate some noise that will impact people's property and homes." Furthermore, the applicant stresses "Beech Ridge does not, however, agree that sound should be measured at a person's boundary line." Pg 55-56 Applicant Reply Brief. This absolutely encroaches on the public rights as a landowner in close proximity of such a project. For the applicant and The Commission to simply ignore and disregard an adjoining property owners right for use of all their property violates their rights. The Applicant failed to comply with siting *Rule 3.1.m.4.B.1 Noise*, and The Commission used its authority to accept failure as compliance.

The Applicant failed to present credible evidence concerning view shed and cultural impact studies of such project and knowingly tried to minimize the perceived view shed and cultural impacts on our community as a whole. The applicant's view shed

maps are completely flawed and lack the expertise of thorough on site research. The burden of producing accurate and credible maps was placed on Mountain Communities For Responsible Energy(MCRE). The applicant failed to comply under Siting Rule 3.1.m.3 View and under Siting Rule 3.1.o Cultural Impacts. The Commission's acceptance of the applicants view shed maps with vegetation entirely disregards the landscape and dynamics of the proposed project.

As adjoining landowners within a mile of many proposed turbines sites, we are the public. As appellants, we are asserting our rights under the laws of the State of West Virginia and the Rules for a siting certificate from the Public Service Commission of West Virginia. The applicant failed to comply with Rules of siting requirements 3.1.h. Maps, which denies landowners rights and The Commission's acceptance of filed maps, proven on the record deemed inadequate, is prejudice for balancing to aspire.

The record indicates that an industrial wind turbine facility would adversely and materially affect the property value's of a landowner in close proximity to such a project as a result of view shed degradation, noise pollution, light pollution and the associated health risks of such a facility. Testimony by Jay Goldman, an applicant real estate expert, concluded that "adverse noise can be external obsolescence" , "lack of view, if you had one before, it could be", and "light pollution could be" testimony, May 16, Pg 115. But, the Goldman report submitted on behalf of the Applicant lacked in its methodology by excluding the concept of "external obsolescence." It failed to accurately predict the outcome of a large-scale industrial wind generating facility in relation to adjoining property owners. Mr. Goldman's conclusion that a project of this size and scale would not affect property values did not give "first hand documentary proof," of what the future holds for Greenbrier County. If, the Applicants expert, had conducted the identical

qualitative analysis performed in Tucker County with Greenbrier County residents, the results would have been overwhelmingly the opposite. Furthermore, the study's confirmation of property value increases in Tucker County since 2002 has a common denominator with all West Virginia counties that border the Commonwealth of Virginia.

Another illustration of authoritative discretion was the acceptance of the applicant's Mead Westvaco expert testimony. The applicant's expert stated that "MeadWestvaco reviewed studies concerning property values when wind farms are constructed and Mead Westvaco concluded that concerns about property values declining were not justified" Order August 28, Pg 78. Again, the Commission never verified the facts of the studies testified on behalf on this expert. The Commission chose to overlook literature, filed with the appellants supporting documents, refuting this expert. The process deemed as acceptable substantially understates the negative impacts without ever appraising and balancing all the issues.

Filed protective orders made certain financial records of the Applicant, unavailable to the public. The economic viability of large scale wind generation facilities are hard to justify without the huge federal tax subsidies and accelerated depreciation granted to businesses such as the Applicant. Without special tax treatment, the operation of a large scale wind generating is not feasible. The only value of industrial wind turbines in West Virginia are tax credits for out of state corporations. This project does create a tax burden upon the citizens of Greenbrier County and the citizens of the State of West Virginia, and offends the public interest. The Commission failed to provide independent analysis to the economic viability to the public, the state and the local economy.

The economic impact study submitted by the Applicant is flawed. It is the estimated economic impact of the project starting with two inputs. One input is the level of construction and employment in Applicant's plan while the other input is the level of construction spending in the Applicant's plan. The economic impact study only stemmed from the plan. No negative economic inputs were considered or placed as a variable to estimate the total economic impact. The study was groundless due to the fact it only addressed the economic impact that stemmed from the plan with no regard to Greenbrier County's whole economic market. The lack of The Commission to address total economic impact issues compromises our thriving economic community as well as the economy of the State. Acceptance of the Applicant's studies by the Commission condones the Applicant to benefit at the expense of the citizens. A massive industry on the Greenbrier County's most scenic and highest ridges seriously threatens the economies of a community that relies heavily on our pristine mountains to attract tourist and second home property owners. Greenbrier County contributes "\$231 million" tourist dollars to the economies of the State of West Virginia.

It is apparent from the memo filed July 31, 2006, by Public Service Commission of West Virginia staff attorney, John Auville that US and Fish Wildlife was not provided with the Applicant's studies for assessment until after the dates of the evidentiary hearings. Therefore, US Fish and Wildlife never had the opportunity to assess the impacts and intervene in the case. Prior to the memo, US Fish and Wildlife filed letters and comments, but The Commission used its authority to weigh their comments and letters as 'public comment'. US Fish and Wildlife stated their recommendation of three years of pre-construction studies was specific to the Applicant's project, and give recommendations in cases "where risk is considered sufficiently high." US Fish and

Wildlife is the “federal agency that is ‘primarily responsible for ensuring the implementation and enforcement of the federal wildlife laws, including the Migratory Bird Treaty Act and the Endangered Species Act.” Mollohan letter Pg.4. The studies they recommend are critical to the conservation and protection of all wildlife, when determining the potential negative impacts of a large-scale wind generating facility. It was unreasonable for The Commission to deny recommendations made by Federal Agencies.

Furthermore, The Commissions order stated the Applicant must comply with the *Endangered Species Act (16 USC 1531 et seq.)*, the *Migratory Bird Treaty Act (16 USC 701 et seq.)* and if applicable, the *National Environmental Policy Act of 1969 (42 USC 4321 et seq.)* in both construction and operation of the project.” Order August 28, Pg 88. Testimony given by this appellant, on May 16, 2006, specifically stated “Yes, I have. I have seen a Mountain Lion on my property.” Transcript Pg 224 Line 13. Testimony concerning endangered species should have been considered compelling. The impact on habitat has been seriously overlooked by this Commission. The endangered species act “prohibits any action, administrative or real, that results in a ‘taking’ of a listed species, or adversely affects habitat.” (16 USC 1531 et seq.) The actions of the Applicant’s project will affect habitat, thus have the real possibility to ultimately threaten endangered species that do in fact reside in the area of the project. Pre-construction studies that were recommended by US Fish and Wildlife “to be able to identify use by threatened and endangered species, and migratory birds and bats,” are the basis for the Applicant to comply with federal laws. The Applicant failed to meet *Siting Rules 3.1.m. Environmental Data*.

The ‘statutory obligation’ of the Commission concluded to the public that the facility’s negative impacts, on balance, would be minimally disruptive to public health,

wildlife, cultural heritage, a tourism based local economy, and real estate values. The Commission dismissed or avoided to weigh potential negative impacts on the economy has a whole and accepted the applicant's expert witnesses and studies.

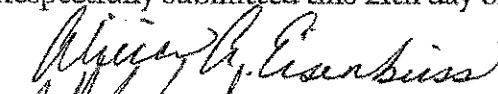

The Commission acknowledged that the intervenors and concerned citizens brought important concerns to the table, but using their discretion, determined them as ambiguous and arbitrary. There must be accountability for the long-term negative consequences on the public interest with respect to the quality of life, the health of the public, the health of the environment, loss of property and the potential loss of economic development due to a large-scale wind generating facility. The Commission in this case has severely used its authority and discretion to interpret the Siting Rules, by deeming the Applicant's application as adequate and in compliance without any thorough, independent evaluation of all respective positions presented in this case

The mechanism of "The Commission shall appraise and balance the interest of the public, the general interest of the state and local economy and the interest of the applicant," has been proven a fatally flawed procedure. Thus, The Commission in issuing a siting a certificate to the Applicant, regardless, of contingency on extensive conditions, literally grants the Applicant the right to perform actions and activities that severely affect the adjoining landowner's rights, the ecology, and local communities.

Prayer for Relief

Wherefore, these Pro Se appellants earnestly pray that after full presentation and comprehensive hearing, that the Honorable Court denies the Public Service Commission of West Virginia order granting a siting certificate, dismiss the application and ultimately write an appropriate guiding opinion.

Respectfully submitted this 21th day of May, 2007.

Alicia A. Eisenbeiss Pro Se
Jeffrey C. Eisenbeiss Pro Se
PO Box 21
Renick, WV 24966
304-497-3180

IN THE WEST VIRGINIA
SUPREME COURT OF APPEALS

ALICIA A. EISENBEISS
and JEFFREY C. EISENBEISS

Appellants

On Appeal from the
Public Service Commission
Of West Virginia

Case No. 05-1590-E-CS

v.

DOCKET NO. 33376

WEST VIRGINIA PUBLIC SERVICE COMMISSION
And BEECH RIDGE ENERGY, LLC; WEST VIRGINIA
STATE BUILDING AND CONSTRUCTION TRADES
COUNCIL, AFL-CIO

Appellees

CERTIFICATE OF SERVICE

We, Alicia A. and Jeffrey C. Eisenbeiss, do hereby certify that on this 21th day of May, 2007, our brief was served by placing one true and exact copy thereof in the regular United States Mail, postage prepaid, addressed as follows:

Executive Secretary
Public Service
Commission
Of West Virginia
201 Brooks Street
PO Box 812
Charleston, WV 25301

Vincent Trivelli, Esq.
178 Chancery Row
Morgantown, WV 26501
*Counsel for West Virginia
State Building and
Construction Trades
Council, AFL- CIO*

Justin St. Clair, Esq
410 Water Street
PO Box 230
Peterstown, WV 24963
*Counsel for Mountain Communities
for Responsible Energy*

Lee F. Feinberg, Esq.
Counsel, Beech Ridge Energy,
LLC
Spilman Thomas & Battle,
PLLC
PO Box 273
Charleston, WV 25321-0273

John Auville, Esq
Staff Attorney
Public Service Commission of West
Virginia
201 Brooks Street
Charleston, WV 25301

The Honorable Alan B.
Mollohan
US House of Representatives
2302 Rayburn House Office
Building
Washington DC 20515

The Honorable Jesse O. Guills
State Senate, Greenbrier County
District
117 N. Court Street
Lewisburg, WV 24901

Respectfully Submitted this 21th day of
May 2007.



Alicia Eisenbeiss
Jeffrey Eisenbeiss